



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
-----	)	ISCR Case No. 17-04141
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie Mendez, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

03/28/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On January 31, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B (Foreign Influence).<sup>1</sup> In a notarized response dated February 28, 2018, Applicant admitted all allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned this case on July 20, 2018. On August 8, 2018, a notice was issued setting the hearing for September 26, 2018. The hearing was convened as scheduled.

The Government offered two documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-2. Applicant gave testimony and offered five documents, which were accepted into the record without objection as Exs. A-E. A transcript (Tr.) of the proceedings was received on October 4, 2018, and the record was closed. After my review of the record as a whole, I find that Applicant mitigated foreign influence security concerns.

---

<sup>1</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after June 8, 2017.

## Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about the Philippines. The request was offered as Government Ex. 2. Applicant did not object. I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications, and from other recent DOHA decisions. The facts considered include, but are not limited to, the following:

- The Philippines is a multi-party, constitutional republic with a bicameral legislature. The United States recognized the Philippines as an independent state and established diplomatic relations in 1946. The United States has designated the Philippines as a major non-NATO ally, and there are close and abiding security ties between the two nations, based on strong historical and cultural links and a shared commitment to democracy and human rights. The Manila Declaration of 2011 reaffirmed the 1951 U.S.-Philippines Mutual Defense Treaty as the foundation for a robust, balanced, and responsive security partnership.

- The United States is among the Philippines' top trading partners, and it traditionally has been the Philippines' largest foreign investor. The United States and the Philippines have a bilateral trade and investment framework and a tax treaty. Philippine imports from the United States include raw and semi-processed materials for the manufacture of semiconductors, electronics and electrical machinery, transport equipment, cereals, and cereal preparations.

- Philippine national elections have been generally free and fair, but independent observers have noted widespread vote buying. In addition, dynastic political families have monopolized elective offices at the national and local level.

- The most significant human rights problems are extrajudicial killings, enforced disappearances undertaken by security forces and vigilante groups, a weak and overburdened criminal justice system, widespread official corruption and abuse of power, and impunity from prosecution for human rights abuses.

- Other human rights problems include prisoner and detainee torture and abuse by security forces, violence and harassment against human rights activists by security forces, warrantless arrests, lengthy pretrial detentions, poor prison conditions, violence against women, abuse and sexual exploitation of children, and trafficking in persons.

- Muslim separatists, communist insurgencies, and terrorist organizations are active in the Philippines, and they have killed Philippine security forces, local government officials, and other civilians. Through joint U.S. - Philippine cooperation, the ability of these various groups to operate in the Philippines has been heavily constrained, but not eliminated. In 2014, there were numerous attacks with small arms and improvised explosive devices, kidnappings for ransom, and extortion efforts by suspected terrorist groups. Gangs of kidnapers have targeted tourists and foreigners, including Filipino-Americans. The U.S. State Department has recommended that all U.S. citizens defer non-essential travel to the Sulu Archipelago due to the high threat of

kidnapping in that area. The State Department also has warned U.S. citizens to exercise extreme caution if traveling to the island of Mindanao due to violent activities of terrorist and insurgent groups.

- The Philippine government has recognized the potential threat posed by radicalized citizens supporting the Islamic State of Iraq and the Levant (ISIL). In July 2014, the Philippine president's anti-terrorism council convened an *ad hoc* emergency technical working group focusing on persons of interest. The working group has tightened passport issuance, increased immigration screening, and increased monitoring of ISIL-related activity.

- The source documents submitted do not establish that the Philippines engages in economic or military intelligence activity against the United States.

### **Findings of Fact**

Applicant is a 42-year-old architect who has worked for the same employer, a defense contractor, for about two years. He specializes in architecture and urban planning. He has earned two bachelor's degrees and a master's degree. Born in the United States, he is married and has two minor children.

In 2010, Applicant's father, a naturalized U.S. citizen, moved back to the Philippines to care for his ailing mother, Applicant's grandmother. Applicant's father bought a condominium in the Philippines after the move, and also had his name put on property owned by his own parents before they died. (Tr. 18) He did so to facilitate its transfer upon the death of Applicant's grandparents. More recently, Applicant's father has decided to retire primarily in the Philippines in order to be close to family.<sup>2</sup> (Tr. 20) Applicant testified that his father subsequently decided to have Applicant put his name on the properties because:

In the Philippines, if you try to inherit property . . . it's darn near impossible. Pretty much the government will take most if not all of it through inheritance. The typical way people go and inherit property is by transfer and/or by putting a second name on the deed title. And the only way you're allowed to have our [sic] name on a deed title in the Philippines is if you were also a Filipino citizen. The Philippines does not allow foreign nationals to go and own property in the Philippines . . . . (Tr. 19)

First, however, Applicant had to become a citizen of the Philippines.

Applicant learned that as a child of two native-born Philippine citizens, he could apply for retroactive recognition of Philippine citizenship, which in his case would mean

---

<sup>2</sup> Applicant's father derives no medical, health, or retirement benefits from the Philippines. (Tr. 29) He does, however, receive a retirement pension and Social Security from the United States to supplement his income in retirement. Applicant does not provide him with any financial assistance.

recognized dual-citizenship with the U.S. and the Philippines.<sup>3</sup> He pursued this avenue despite having “no interest . . . I’m doing this out of an abundance of respect for my father. I see him very infrequently . . . maybe once a year. I might correspond with him via email or a version of text message maybe a handful of times.” (Tr. 20) Applicant’s intention is to sell the property when his father passes away as he has no need for the property or its financial benefits. He noted, “if I don’t get a dime it will not bother me in the slightest. . . . Whether I get any money for it doesn’t matter to me.” (Tr. 20-21, 40)

In contrast to his potential future interest in the Philippines, Applicant was born, raised, and educated in the United States. He and his wife have built their home and are raising their family within their community, where they are highly involved in a variety of capacities. (Tr. 23) The family is very involved with their church and its various committees. Currently a homemaker, Applicant’s wife, a former professor, is an active volunteer.<sup>4</sup> She plans to continue in that capacity until her children are a little older. Applicant maintains close contact with his divorced mother and his in-laws, all of whom live in the same region. He has worked for his current employer and several state and local governments over his career, earning him a solid professional reputation. The family is “more than comfortable without any other financial assistance.” (Tr. 21)

Applicant maintains his checking, savings, and retirement accounts in the United States. His personal retirement account amounts to about \$200,000, he keeps about \$10,000 in liquid assets, and their home is worth about \$350,000. Both his children are enjoying the local public schools, where Applicant and his wife are active. The children are busy with multiple extracurricular and community activities. Applicant does not have a valid Philippine passport, nor does he speak the Tagalog language. (Tr. 21, 41)

At issue are three properties in the Philippines, noted in the SOR at 1.b-1.d The property at 1.b, in which Applicant’s father resides, is jointly owned by Applicant’s father, half-sister, and Applicant.<sup>5</sup> Technically, the father is the primary owner with Applicant and his half-sister listed as secondary interests on the deed. Located in the vicinity of Metro Manila, this condominium is currently worth about \$100,000.<sup>6</sup> (Tr. 34) A parking space for that unit is valued at about \$7,000.

The property at 1.c, which is located in the same region, is a condominium currently under construction. This smaller property, valued as potentially worth about \$40,000, is similarly co-owned by Applicant’s father, half-sister, and Applicant. An associated parking place is valued at approximately \$5,800. This property was

---

<sup>3</sup> Because the application for retroactive citizenship does not actually seek Philippine citizenship, but only the acknowledgment that Applicant automatically became a Philippine citizen upon birth to two native Philippine citizens, it does not constitute an application to become a Philippine citizen. (Tr. 31-32)

<sup>4</sup> No evidence was offered regarding Applicant’s wife’s finances, savings, future interests, etc.

<sup>5</sup> Applicant’s half-sister also has no interest in the properties at issue or relocating from the United States to the Philippines. Here, she has a family, children, and career. (Tr. 40) Should she later take an interest in one or more of the properties, Applicant will sign over his interests to her.

<sup>6</sup> The Manila region is distant from the Sulu Archipelago and Mindanao, areas in which the U.S. State Department advises U.S. citizens to use particular caution.

purchased during the pre-construction stage. Applicant's father intends to eventually sell his current condominium and downsize into this property.

The property at 1.d is a new residential apartment building consisting of 26 units and valued at about \$400,000. The building is currently jointly owned in the same manner as the other properties, with Applicant's father as primary owner. In about 2015, Applicant's grandparent's home and office was razed in order to build this structure. Units are currently available for rent. (Tr. 39)

In addition, Applicant is a signatory on his father's various savings accounts in the Philippines. (Tr. 45) He was put on to these accounts to facilitate in their liquidation upon the father's death. (Tr. 42, 45-46) They make up his father's "play money," cash the father uses to make investments on the stock market. (Tr. 42) Applicant believes it amounts to about \$50,000. These are distinctly different balances from the money Applicant's father maintains in U.S. banking institutions in this country. Applicant is not fully aware of his father's financial holdings in the United States. His father is 70 years old, a diabetic smoker with serious spinal issues.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person in making a decision. The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends beyond normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may fail to safeguard such information.

## Analysis

Under the AG, foreign contact and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U. S. interests or otherwise be made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contact and interests should consider the country (Philippines) in which the foreign contact or interest is included.

The AG lists nine available disqualifying conditions. Given that Applicant has a father who is a dual-citizen of the U.S. and the Philippines who resides in the Philippines most of the year, and because Applicant is a co-owner of properties and bank accounts held by his father in the Philippines, I find the following apply:

¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country, if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

¶ 7(f): substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Under ¶ 8, three mitigating conditions are potentially applicable:

¶ 8(a): the nature of the relationships with foreign persons, the country which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

¶ 8(f): the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

As a threshold issue, I note the information regarding the Philippines incorporated into this analysis above. Here, the Government is concerned with whether there is a risk of exploitation, inducement, manipulation, pressure, or coercion related to Applicant's father and the Philippine properties. (Tr. 47) Applicant's closeness to his father is demonstrated by his going through the process to permit his name to be on the property deeds and bank accounts, something he did "out of an abundance of respect" for his father. As a result, he and his half-sister have the potential of splitting about \$552,000, or receiving about \$276,000 each. In addition, should the funds and investments not be depleted, Applicant has the potential of inheriting about \$50,000 in Philippine held "fun money." Consequently, Applicant clearly has a notable (\$326,000) financial interest in the Philippines.

The reason Applicant has gone through certain legal machinations in order to have his name added to his father's properties and banks is related to problems concerning inheritance in the Philippines. Applicant's testimony reflects that extraordinary efforts are taken in the law to keep such interests from being passed down to one's heirs. Taken in conjunction with the country's reputation for vigorous tactics and circumventing due process, there is the potential concern as to how far it would go to gain something it wants. Similarly, there are third-party forces and terrorist groups within the Philippines known to kill and kidnap foreigners, a significant problem recognized by the Philippine government as well.

Facts exist, however, tending to mitigate the security concerns raised. Applicant was born and raised in the United States. Here, he was educated, met his wife, and married. They have built their own home, had children, and become heavily involved with their community, church, and school system. He considers the United States to be his only home and he has no desire to move to the Philippines, where he does not speak the language. Applicant has excelled in his profession within his region. He maintains a close relationship with his mother and with his in-law here, as well. He has personally made no financial investments abroad. Rather, in the United States, he has retirement savings of about \$200,000, about \$10,000 in liquid assets, and their home is valued at about \$350,000. Combined, this represents about \$560,000 in current worth for a man in his early 40s with considerable earning potential in his future, and with a wife who will inevitably return to the workforce. Applicant was credible in his declarations that he has no need for the potential inheritances at issue, and will liquidate any such inheritance received. I find ¶ 8(a)-(b) and ¶ 8(f) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed in the AG. The ultimate determination of whether

to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors related to the whole person concept have already been discussed, but some warrant emphasis.

Applicant is a 42-year-old architect who has worked for the same employer for about two years. He has made a successful career in his region working with governments and communities with regard to architecture and urban planning. He was born, raised, and educated in this country. He and his wife have two children who are likewise being raised and educated in the local schools. The family is enmeshed in their community, busy with volunteerism, the schools, and church. Applicant's wife, a former professor, is a homemaker and volunteer at present, taking time from work until the children are a little older. They are happy and successful living their American dream.

Applicant's father has returned to his birthplace, the Philippines, as a part-time resident. Because of restrictive and somewhat dubious inheritance laws, he had Applicant have his dual-nationality (U.S.-Philippines) recognized so he could have Applicant's name added to property titles along with his half-sister. Applicant has no interest in either the properties or living in the Philippines. He went through these machinations out of respect to his father, not for economic gain. Should he come into his share of this property-based inheritance, he will either cash out of the investment or give his half-sister his interest. He considers his father's "fun money" to be comparatively *de minimis*. Applicant is a highly successful professional with markedly more financial holdings in the United States. Taken together, Applicant's potential inheritance is unlikely to result in a conflict or be used effectively to influence, manipulate, or pressure him, just as his longstanding loyalties to the United States outweigh his interests abroad. Therefore, I find Applicant has mitigated foreign influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

---

Arthur E. Marshall, Jr.  
Administrative Judge